Supreme Court, U.S.
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No. 698

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

In the Matter of

THE STARR BROTHERS BELL COMPANY,
Bankrupt.

In Bankruptcy No. 25527

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute involved	2
Statement	2
Reasons for granting the writ	2
Conclusion	7
Appendix A—Statutes	8
B—Opinions and judgment below	9

CITATIONS

CASES:

Andrews v. *Connecticut Properties*, 137 Conn. 170	3, 5
Beach v. *Osborne*, 74 Conn. 405	6
Bickart v. *Sanditz*, 105 Conn. 766	5
Belles v. *Chauncey*, 8 Conn. 390	5
Booth v. *Barnum*, 9 Conn. 286	4, 5
Bridgeport Land and Title Co. v. *Orlove*, 91 Conn. 498	6
Bramball v. *Flood*, 41 Conn. 72	4
Bush v. *Golden*, 17 Conn. 594	6
Crane v. *Deming*, 7 Conn. 387	5
First National Bank v. *National Grain Corp.*, 103 Conn. 657	5
Hart v. *Chalker*, 14 Conn. 77	4
Hill v. *Banks*, 61 Conn. 25	5
Ives v. *Stone*, 51 Conn. 446	5, 6
North v. *Belden*, 13 Conn. 376	6
Pettibone v. *Griswold*, 4 Conn. 158	4, 5
Rood v. *Welch*, 28 Conn. 157	6
Rosenbluth v. *Deforest and Hotchkiss Co.*, 85 Conn. 40	6
Safford v. *McNeil*, 102 Conn. 684	7
Shepard v. *Shepard*, 6 Conn. 37	4
St. John v. *Camp*, 17 Conn. 222	5
Stein v. *Davidson*, 110 Conn. 4	6
Stoughton v. *Pasco*, 5 Conn. 442	4

INDEX Continued

Page

STATUTES:

Bankruptcy Act of 1898, c. 541, 30 Stat. 554, Sec. 70c (11 U.S.C. 1953 ed., Sec. 110c) 8
3 Conn. Gen. Stat., p. 2650, tit. 58, c. 363, Sec. 7265 (1949) 8

MISCELLANEOUS:

1 Jones on Mortgages, (8th ed. 1928), Sections 426, 450 n. 39 ..... 4, 5

IN THE

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OCTOBER TERM, 1954

No.

In the Matter of

THE STARR BROTHERS BELL COMPANY,

Bankrupt.

In Bankruptcy No. 25527

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner prays that writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above-entitled case on January 4, 1955.

CITATIONS TO OPINIONS BELOW

The memorandum of opinion of the referee in bankruptcy (R. 33) is unreported and is printed in Appendix B hereto, *infra* p. 9. The memorandum of decision on the petition for review to the United States District Court, District of Connecticut (R. 38) is unreported and is printed in Appendix B hereto, *infra*, p. 10. The opinion of the United States Court of Appeals for the Second Circuit (R. 43) is not yet reported and is printed in Appendix B hereto, p. 12.

JURISDICTION

The judgment of the United States Court of Appeals for the Second Circuit was entered on January 4, 1955. (Appendix B hereto, *infra* p. 13.) The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTION PRESENTED

Whether the chattel mortgage of Reconstructon Finance Corporation is invalid under Section 7265 of the General Statutes of Connecticut, Revision of 1949, as against a trustee in bankruptcy in that it fails to state the nature and the amount of the indebtedness as required, and does not include a particular description of the terms of repayment so that they can be ascertained with such reasonable certainty as to enable subsequent purchasers, mortgagees, or creditors to ascertain the nature and amount of the indebtedness.

STATE STATUTE INVOLVED

The statutory provision involved is 3 Conn. Gen. Stat., p. 2650, tit. 58, c. 363, Sec. 7265 (1949). It is printed in Appendix A, hereto, *infra* p. 8.

STATEMENT

The Starr Brother Bell Company, was adjudicated a bankrupt on July 17, 1953. The jurisdiction of the District Court was invoked because the case arises under the Bankruptcy Act. On January 23, 1948, the bankrupt executed and delivered to Reconstruction Finance Corporation its chattel mortgage (R. 17) of that date, whereby it mortgaged some machinery therein listed, and its real estate. Subsequent to adjudication, the Reconstruction Finance Corporation filed its Proof of Claim on August 27, 1953, claiming to be a secured creditor (R. 7). The Trustee in

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Bankruptcy made Application to Disallow Privileged Claim (R. 5) to the Referee in Bankruptcy on September 2, 1953. The Trustee claims that the chattel mortgage (R. 17) is invalid as against a Trustee in Bankruptcy because its terms concerning the indebtedness and repayment do not satisfy the requirements of Section 7265 of the Connecticut General Statutes, Revision of 1949 (Appendix A, hereto). Accordingly, under Section 70c of the Bankruptcy Act (Appendix A, hereto) the Trustee in Bankruptcy has the position of a lien creditor holding a lien on the proceeds of the sale of the personal property. The note is marked Exhibit A (R. 12), and the mortgage is marked Exhibit B (R. 17). On February 2, 1954, the Referee in Bankruptcy disallowed the Trustee's Application to Disallow Privileged Claim (R. 33; Appendix B, hereto). Upon a Petition for Review, District Court for the District of Connecticut denied the Petition for Review (R. 40; Appendix B, hereto). The court held that from the face of the instruments the exact amounts payable on principal could not be ascertained, but that the method by which an interested party could determine such amounts and the sources of the needed information are clearly indicated, and that is all that is reasonably required.

The ruling by the District Court was assigned as error in the appeal to the United States Court of Appeals for the Second Circuit (R. 40; Appendix B, hereto). The court affirmed the order of the District Court (R. 43; Appendix B, hereto) upon the ground that the petitioner's contention did not stem from the statute but must depend upon the general law of contracts.

REASONS FOR GRANTING THE WRIT

1. The decision of the court below in the instant case is directly in conflict with the principles of the decision of the Supreme Court of Errors of the State of Connecticut in *Andrews* v. *Connecticut Properties, Inc.*, 137 Conn. 170 *supra*, and other decisions of that state court.

The position of the Trustee is that he has the position of a lien creditor on the proceeds of the sale of the personal property which were the subject of the chattel mortgage, and the issue is whether the Trustee takes precedence over the chattel mortgagee with respect to such proceeds.

As early as 1822, in *Pettibone* v. *Griswold*, 4 Conn. 158, the Supreme Court of Errors of the State of Connecticut held that, while literal exactness in describing mortgage liability was not essential, so as to preclude the necessity of extraneous inquiry, yet the description of the debt secured must be sufficiently definite to enable subsequent purchasers, mortgagees or creditors to discover the amount or extent of the incumbrance by the exercise of common prudence. This principle was reaffirmed in *Hart* v. *Chalker*, 14 Conn. 77, *Booth* v. *Barnum*, 9 Conn. 286, *Stoughton* v. *Pasco*, 5 Conn. 442. In other words, to render a mortgage valid as against strangers, it must give reasonable notice of the liability secured. *Shepard* v. *Shepard*, 6 Conn. 37, *Stoughton* v. *Pasco*, *supra*, *Pettibone* v. *Griswold*, *supra*. The case of *Bramhall* v. *Flood*, 41 Conn. 72 fully and distinctly reasserted the rule laid down in the earlier cases. It was there held that the mortgage must truly describe the debt intended to be secured, and that it is not sufficient that the debt be of such character that it might have been secured by the mortgage had it been truly described. 1 *Jones on Mortgages* (8th ed. 1928) Section 450, n. 39. It has been held that a mortgage given to secure an existing debt of a fixed amount, which is described in the condition of the mortgage only as a note due from the mortgagor to the mortgagee is not a valid security against subsequent encumbrancers. *Hart* v. *Chalker*, 14 Conn. 77. The Court there said "whether this omission was owing to design or accident we are not informed. In either case the effect would be the same; and the public would not have the information which it was intended should be given, and which, if generally neglected, would make our records of little value. Indeed, if such a general description is good, it would seem as it were enough to say, this mortgage is intended to secure

any debt due; for there would be little more danger in that case, of substituting fictitious debts, than in this, where the sum is omitted; . . . It is said that there is enough to put a person on inquiry, and that is all a court of equity requires. That principle, we do not think, is applicable to cases of this class, where there is a certain known debt. If it is to be adopted as a general rule it would overturn all the cases in which this court has held that the description was too indefinite. *St. John* v. *Camp*, 17 Conn. 222, *Booth* v. *Barnum*, 9 Conn. 286, *Bolles* v. *Chauncey*, 8 Conn. 390, *Crane* v. *Deming*, 7 Conn. 387, *Pettibone* v. *Griswold*, 4 Conn. 158."

In *First National Bank* v. *National Grain Corp.*, 103 Conn. 657, the court held "A careful examination of all Connecticut cases shows that the Connecticut court requires a degree of strictness in describing the indebtedness. The requirements as to stating the debt are that the nature and the amount of the indebtedness shall be stated with all reasonable certainty. Subsequent incumbrancers have a right to know with all the certainty the case admits of the amount already secured on the property and the nature of the indebtedness so secured. *Hill* v. *Banks*, 61 Conn. 25, 1 *Jones on Mortgages*, (8th ed. 1928) Section 426. As late as 1950, in the case of *Andrews* v. *Connecticut Properties*, 137 Conn. 170, the court said, "The underlying principle, . . . is that the recorded instrument should disclose the real nature of the obligation for the information of other creditors. . . . The mortgage did not describe the transaction with the requisite accuracy . . . The fact that G (attaching creditor) had notice of the state of the title was immaterial. *Ives* v. *Stone*, 51 Conn. 446, 458 . . ." In the latter case it was found that the mortgage in issue, which plaintiff was attempting to foreclose, was security to protect the mortgagee B against loss if the defendants defaulted on their note to a third party, this note being secured by the assignment of a mortgage held by B on the property. The mortgage did not describe the transaction with accuracy. The judgment should have given priority to an attachment lien placed

upon the property by the attaching creditor subsequent to the mortgage. The fact that the attaching creditor has notice of the state of the title was immaterial. Other cases holding this rule of law include *Stein* v. *Davidson*, 110 Conn 4, *Bridgeport Land and Title Co.* v. *Orlove*, 91 Conn. 498, *Rosenbluth* v. *DeForest and Hotchkiss Co.*, 85 Conn. 40, *Beach* v. *Osborne*, 74 Conn. 405, *Ives* v. *Stone*, 51 Conn. 446, *Bush* v. *Golden*, 17 Conn. 594, *North* v. *Belden*, 13 Conn. 376 and *Rood* v. *Welch*, 28 Conn. 157.

Applying the facts of this case to the rule of law discussed, we find that the repayment provisions, because of lack of clarity and ambiguity, do not meet the standards laid down by the Supreme Court of Errors of Connecticut in the cases cited.

From the face of the recorded instruments it was impossible to determine what additional amounts were required to be paid by the mortgagor. This was found by the District Court below in the instant case. It is submitted that creditors could not determine by any reasonable and prudent inquiry, the nature of the transaction. There is no clear indication of any reasonable method or source by which the needed information could be obtained. Furthermore the provisions for repayment are vague and ambiguous.

The Trustee submits that for the foregoing reasons the mortgage and lien are, as to creditors and the Trustee in the position given him under Section 70 c of the Bankruptcy Act, null and void and not effective against the Trustee.

2. The question presented is of importance in the administration of the bankruptcy laws. Settlement of the question by this court is plainly in the public interest since there is presented in numerous bankruptcy proceedings questions involving the validity of the liens of chattel mortgagees as opposed to the claims of the Trustee in Bankruptcy and the decision of the court below is in

conflict with the decisions of the Connecticut Supreme Court of Errors.

The position of the Trustee does not depend on the general law of contracts as is stated in the opinion of the court below but is based on the provisions of the statute and the interpretations of the requirements of this statute by the Supreme Court of Errors of the State of Connecticut. That court has ruled that this statute is to be strictly construed to require exact compliance with its terms as a condition precedent to the existence of a lien valid against creditors *Safford* v. *McNeil*, 102 Conn. 684, 688; *Bickardt* v. *Sanditz*, 105 Conn. 766, 771.

The statutes and decisions of the State Court require that the nature and amount of the indebtedness be stated with all reasonable certainty. It is submitted that the mortgage in the instant case does not state the nature and amount of the indebtedness with reasonable certainty as set forth in the decisions of the Supreme Court of Errors of the State of Connecticut.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

March 31, 1955.

Respectfuly submitted,

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New Haven, Connecticut,
Counsel for Petitioner.

Of Counsel:

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New Haven, Connecticut.

APPENDIX A

3 Conn. Gen. Stat. 2650, tit. 58, c. 363. Sec. 7265 (1949).

Sec. 7265. *Tangible personal property may be mortgaged.* Any tangible personal property, except those chattels hereinafter specifically excluded, may be mortgaged by a deed containing a condition of defeasance and a particular description of such property, the amount of the debt and the terms of repayment, executed, witnessed and acknowledged as are deeds of land and filed in accordance with the provisions of Section 7268. Any tangible personal property may be mortgaged, together with real estate on which it is situated. When any tangible personal property is mortgaged, together with real estate, it shall be recorded and may be foreclosed as if it were wholly of real estate.

Bankruptcy Act of 1898, c 541, 30 Stat. 544; sec. 70 c (11 U.S. C. 1953 ed., Sec. 110 c).

Sec. 70 c. The trustee may have the benefit of all defenses available to the bankrupt as against third persons, including statutes of limitation, statutes of frauds, usury, and other personal defenses; and a waiver of any such defenses by the bankrupt after bankruptcy shall not bind the trustee. The trustee, as to all property, whether or not coming into possession or control of the court, upon which a creditor of the bankrupt could have obtained a lien by legal or equitable procedings at the date of bankruptcy, shall be deemed vested as of such date with all the rights, remedies, and powers of a creditor then holding a lien thereon by such proceedings, whether or not such a creditor exists.

APPENDIX B

UNITED STATES DISTRICT COOURT
DISTRICT OF CONNECTICUUT

In the Matter of

THE STARR BROTHERS BELL COMPAANY,

Bankrupt.

In Bankruptcy No. 25527

Order Disallowing Petition of the Trustee to DDeclare Chattel Mortgage of the Reconstruction Finance Coorp. Invalid

The trustee of this estate having filed an applicacation to declare a certain chattel mortgage dated January 23, 19948, held by the Reconstruction Finance Corporation, invalid for rreasons set forth in said application and the Reconstruction Finannce Corporation having filed on January 7, 1954 a petition to estatablish a lien on proceeds of the sale of property,

Now, therefore, for reasons set forth in the mmemorandum of law submitted by Reconstruction Finance Corpooration filed December 21, 1953,

It is ordered that the application of the truststee be, and the same hereby is, disallowed, and

It is found that the Reconstruction Finance CCorporation has a valid lien on the proceeds of the sale of propertyy subject to said mortgage in the sum of $19,262.60 with such iinterest as may accrue thereon, and

It is so ordered.

At Hartford, Conn., February 2, 1954.

SAUL BERMAAN,
Referee imn Bankruptcy.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Bankrupt

In the Matter of

THE STARR BROTHERS BELL COMPANY,

In Bankruptcy No. 25527

Memorandum of Decision on Petition for Review

The trustee in bankruptcy of The Starr Brothers Bell Company petitions for review of an order of the Referee dated February 2, 1954, allowing a claim of Reconstruction Finance Corporation as a valid secured claim.

The trustee in his position of a lien creditor claims priority over the Reconstruction Finance Corporation claim on the ground that a mortgage of real property with machinery, equipment and other personal property listed, given to secure an R.F.C. loan to the bankrupt, is invalid as against lien creditors for two reasons, uncertainty as to terms of payment and indefiniteness of description of the personalty mortgaged.

Neither attack appears well grounded. The amount of the loan evidenced by the note secured by the mortgage is correctly stated at $22,500. The terms of repayment, attacked as ambiguous, contained in the note recorded with the mortgage deed and incorporated therein by reference, provided for monthly principal payments of $381.35, balance within five years from date, with additional annual principal payments in the amount, if any, by which 50% of the borrower's net earnings for the preceding fiscal year determined in accordance with good accounting practice, before depreciation, exceeded the aggregate amount required to be applied on the principal of the note during such preceding fiscal year.

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It is true that from the face of the instruments recorded the exact additional amounts in dollars and cents payable on principal if favorable income results were achieved by the borrower in each year could not be ascertained.

The method by which any interested party could determine such amounts and the sources of the needed information are clearly indicated, however, and that is all that need reasonably be required with respect to such a contingent payment acceleration provision.

The face amount of the loan is made known exactly. Likewise the interest provisions and minimum principal repayment provisions, with the contingent additional principal payments required readily ascertainable.

The description of the personalty may be somewhat more questionable, since some of the items are described without serial numbers or minutely accurate details of appearance. Since the equipment is such as is found in place in a plant and is not intended to be removed, and since in large part serial numbers are given, as in the case of the electric motors and Atlas Drill Presses, and a sufficient description to identify other items on the premises, we may well hold that the description is sufficient to identify the items for the purpose of the mortgage lien.

The petition for review is denied.

The order disallowing petition of trustee to declare chattel mortgage of Reconstruction Finance Corporation invalid and finding that the claim of Reconstruction Finance Corporation constitutes a valid lien on the proceeds of the sale of property is confirmed.

Dated at Hartford, Connecticut, this 23rd day of March, 1954.

J. Joseph Smith,
United States District Judge.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 62 OCTOBER TERM 1954

Argued December 15, 1954 Decided January 4, 1955

Docket No. 23159

In the Matter of

STARR BROTHERS BELL COMPANY, Bankrupt.

Before SWAN, FRANK and HINCKS, Circuit Judges.

Appeal from the United States District Court for the District of Connecticut, Smith, Judge.

The trustee in bankruptcy appeals from an order which denied his petition to declare invalid a chattel mortgage of Reconstruction Finance Corporation and allowed its claim as a lien on the proceeds of the sale of the mortgaged chattels free of liens.

Affirmed:

NELSON HARRIS, *Attorney for Appellant.*
EDWARD G. GRIFFIN, *Attorney for Appellee.*

PER CURIAM:

Section 7265 of the General Statutes of Connecticut (1949 Revision) requires the mortgage to set forth "the amount of the debt and the terms of repayment." This requirement was fully satisfied by incorporating in the mortgage a copy of the note secured thereby. The appellant seems to argue that the terms of repayment are too indefinite to constitute a valid contract. This contention is one which stems not at all from the statute on which the appellant relies but must depend upon the general law of contracts. He cites no case to support his position. *Crane* v. *Deming*, 7 Conn. 387 is against it. The appeal is without merit and the order is affirmed on the opinion of Judge Smith.

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Judgment

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 4th day of January one thousand nine hundred and fifty-five.

Present:

HON. THOMAS W. SWAN,
HON. JEROME N. FRANK,
HON. CARROLL C. HINCKS,
Circuit Judges.

In the Matter of

THE STARR BROTHERS BELL COMPANY,
Bankrupt,

IRVING GROOB,
Trustee-Appellant,

RECONSTRUCTION FINANCE CORP.,
Appellee.

Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

/s/ A. DANIEL FUSARO,
Clerk.